

SUPREME COURT
STATE OF NEW YORK

COUNTY OF MONROE

NANCY MAHER and MARTIN MAHER,

Plaintiffs,

-vs-

VERIFIED COMPLAINT

BROTHER JOHN LAURENCE HEATHWOOD,
Individually; CONGREGATION OF CHRISTIAN
BROTHERS OF IRELAND; ROMAN CATHOLIC
DIOCESE OF ROCHESTER; BISHOP KEARNEY
HIGH SCHOOL

Defendants.

Plaintiffs, by their attorneys, FULREADER, ROSENTHAL,
SULLIVAN, CLIFFORD, SANTORO & KAUL, as and for their complaint
against Defendants, respectfully allege as follows:

PRELIMINARY STATEMENT

1. Plaintiff Nancy Maher (hereinafter referred to as
"Plaintiff") brings this action against Defendants for damages
sustained by Plaintiff, resulting from Defendant Heathwood's
sexual abuse of Plaintiff over a period of at least twenty-eight
years beginning when Plaintiff was 12 years old and continuing
until she was 40 years old, while Defendant Heathwood was in the
employ and under the supervision of the other three named
Defendants.

Defendant Heathwood as a course of continuous
conduct assaulted, battered, molested, harassed, sexually abused
and raped Plaintiff from approximately 1965 until 1992. Plaintiff

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has suffered physical and psychological injuries as a direct and proximate result of Defendant Heathwood's wrongful conduct.

2. Plaintiff further brings this action against the other named Defendants for damages sustained by Plaintiff as a result of Defendants' negligence, recklessness, and willfulness in placing, supervising, retaining and referring Defendant Heathwood in positions of trust and as a result of Defendant's failure in their duty to address the problem of sexual abuse by clergy, of which Defendants were or should have been aware.

3. As a result of Defendants' actions, Plaintiff has been severely psychologically damaged suffering from repressed memory, dissociation, denial and posttraumatic stress syndrome, leaving her unable to pursue any legal action until recent counseling enabled her to recognize the injury she has suffered and to take legal action.

4. Defendants' false representations to Plaintiff on which she relied; Defendants' threats, coercion and deception disabled Plaintiff from pursuing legal action earlier.

5. Plaintiff Martin Maher brings a derivative action for loss of consortium from November 19, 1983, the date Plaintiffs were married to the present.

FACTUAL ALLEGATIONS

6. Plaintiff Nancy Maher was born on October 18, 1952.

7. Plaintiff and her family belonged to, and were active members of, the Roman Catholic Diocese in Rochester, New York, contributing financially, and solicited actively through the mail and otherwise for contributions by Defendants.

8. Plaintiff's two sisters, one brother, and herself attended Bishop Kearney High School in Rochester, New York.

9. Plaintiff attended Bishop Kearney High School from 1966 to 1970.

10. Upon information and belief, Bishop Kearney High School is a parochial school owned and operated by the Roman Catholic Diocese of Rochester and by the Congregation of Christian Brothers of Ireland, (hereinafter referred to as "Christian Brothers") the Order from which the teachers at the school come.

11. Upon information and belief, the Christian Brothers are a Roman Catholic Order headquartered in Rome, Italy, and located throughout the world, including the United States, with the Eastern U.S. Province headquarters located in New Rochelle, New York.

12. Upon information and belief, Defendant Bishop Kearney High School is under the jurisdiction of the Roman Catholic Diocese of Rochester and the Christian Brothers.

13. Defendant Heathwood, a Professed Irish Christian Brother, belonging to the Christian Brothers, and at all times material hereto, employed by Defendants Christian Brothers, and

for a period of time by Bishop Kearney High School and the Roman Catholic Diocese of Rochester, was assigned by his Order to Bishop Kearney High School in Rochester, New York, upon information and belief, on or about 1964 as a math teacher and head of the Dramatics Program and Summer Theater Program.

14. Defendant Heathwood remained a teacher at Bishop Kearney High School from 1964 until 1974 when he left Rochester and was reassigned to, upon information and belief, other schools in the State of New York.

15. Upon information and belief, Defendant Heathwood was reassigned several years ago to Bishop Hendricken High School, Warwick, Rhode Island, where he has been a teacher to the present.

16. Upon information and belief, sometime prior to coming to Rochester, Defendant Heathwood was a teacher at a school in St. Johns, Newfoundland, Canada, where he taught first grade for 17 years.

17. Upon information and belief, Defendant Heathwood will be retiring from teaching in June 1993 and leaving Rhode Island for another destination unknown, and is, upon information and belief, currently residing in Connecticut or New Jersey.

18. Soon after coming to Rochester, New York, Defendant Heathwood met Plaintiff's parents at a Bishop Kearney High School function and Plaintiff's father and mother and Defendant Heathwood became very good friends.

19. As the friendship between Plaintiff's father and mother and Defendant Heathwood grew, Defendant Heathwood had numerous occasions to be around Plaintiff, both alone and in the company of others.

20. Plaintiff's parents entrusted her, and her siblings, to Defendant Heathwood, as a Brother, teacher and friend.

21. When Plaintiff began high school at Bishop Kearney, Defendant Heathwood, at the request of Plaintiff's parents, tutored Plaintiff for a period of time.

22. As head of the Dramatics Department, Defendant Heathwood was again in a position of supervisory authority over Plaintiff who was very active in the department.

23. As head of the summer stock program, Defendant Heathwood again was Plaintiff's teacher as she participated in the summer theater program.

24. Representing Bishop Kearney High School, the Christian Brothers and the Roman Catholic Diocese of Rochester at several church and social functions, Defendant Heathwood continued to have access to Plaintiff.

25. Starting at least as early as 1965, when Plaintiff was 12 years old, and continuing to in or about 1992, Defendant Heathwood injured Plaintiff Nancy Maher by acts including, but not limited to, the following:

A. Forcibly abusing her physically and sexually on many occasions against her will by acts which included, and were not limited to, fondling, sexual intercourse, penetration with fingers and objects, fellatio, slapping, pinching, biting, and sucking Plaintiff's breasts, slapping her buttocks and genitals and taking photographs of her with welts all over her body.

B. Lewd comments, sexual innuendos, harassment, threats, comments meant to humiliate Plaintiff and prey upon Plaintiff's fear and feelings of degradation and helplessness.

26. Defendant Heathwood committed the above acts, and others like them against Plaintiff without her consent and against her will by force and duress.

27. Defendant Heathwood threatened to show the photographs he had taken of Plaintiff to Plaintiff's mother to insure her silence.

28. Several of Defendant Heathwood's acts towards Plaintiff occurred on trips Defendant took Plaintiff on out of New York State.

29. After Defendant Heathwood left Rochester in 1974 he traveled back and forth between various states and New York and continued to commit the acts described above.

30. After leaving Rochester, Defendant Heathwood continued to return to Rochester as many as five times a year for Bishop Kearney High School class reunions, graduations, weddings,

funerals and social occasions involving members of the Roman Catholic Diocese of Rochester and Bishop Kearney High School.

31. During his absences from Rochester, Defendant Heathwood called Plaintiff on numerous occasions making lewd and sexually suggestive comments.

32. On one visit to Rochester in July 1992, Defendant Heathwood saw Plaintiff and, in the presence of her three year old son, mashed his body against hers, pressed his knees into her genitals and grabbed her breasts.

33. Defendant Heathwood continued his acts towards Plaintiff after Plaintiff was married on November 19, 1983.

34. During the entire period in which Defendant Heathwood engaged in the above noted conduct, he was in a position of trust as a Professed Brother, family friend, and an outwardly caring member of the school, the Diocese and the Order.

35. During this entire period, Defendant Heathwood maintained his outward facade and represented himself to Plaintiff as one entrusted with her care.

36. During this entire period, Defendant Heathwood misrepresented and concealed from Plaintiff the wrongful nature of his actions towards her and committed these acts in secrecy.

37. During this entire period, Defendant Heathwood, intended and induced Plaintiff to rely on his false

representations so that she would not reveal his conduct or acts to anyone.

38. Defendant Heathwood knew that his actions were wrongful and that his contrary representations to Plaintiff were false.

39. Plaintiff did not know that Defendant Heathwood's representations were false, relied on Defendant Heathwood's representations, and suffered serious injury as a result.

40. As a result of Defendant Heathwood's acts, Plaintiff suffered from a psychological condition whereby she repressed, denied, blocked and dissociated herself from the acts being committed on her to avoid the severe physical and emotional pain and trauma caused by them. Consequently, she was not aware of the wrong that had been done to her.

41. As a direct and proximate result of Defendant's conduct, Plaintiff suffered, and continues to suffer, severe and chronic physical and psychological injuries.

42. Plaintiff's physical injuries include, but are not limited to, the following: chronic cervicitis, cervical scarring, vaginal bleeding, bleeding breasts, dyshydrotic eczema, and inability to conceive children.

43. Among Plaintiff's psychological injuries are the following: chronic posttraumatic stress disorder, dissociative disorder, nightmares, flashbacks, terror, suicidal feelings, panic

attacks, sexual disorders, eating disorders, repression of memories and sleep disorders.

44. In or about the Fall of 1992, Plaintiff began therapy and was able to recall, recognize and understand the consequences of Defendant Heathwood's abuse of her and was able to take legal action.

45. Through therapy and counseling, Plaintiff is in the process of remembering details, dates, and other instances of Defendant Heathwood's sexual abuse of her.

46. Plaintiff's allegations against Defendant Heathwood have been corroborated by his admissions to common acquaintances and by the revelation of at least one other woman to Plaintiff that Defendant Heathwood sexually abused this woman throughout her childhood as well, during the same period he was abusing Plaintiff.

47. Upon information and belief, during Defendant Heathwood's tenure in Newfoundland, several allegations of sexual misconduct and abuse were raised against the Christian Brothers Order in Newfoundland and several lawsuits were brought against the Christian Brothers, resulting in prison terms for six members of the Christian Brothers.

48. Upon information and belief, Defendants were aware, or should have been aware, of the numerous allegations and

instances of sexual abuse by clergy of children and members of the Roman Catholic community during the period of this action.

49. Upon information and belief, Defendants have taken no steps to investigate such allegations or to act with due care upon the allegations made.

50. Upon information and belief, one of the persons to whom Defendant Heathwood admitted his sexual abuse of Plaintiff received a threatening telephone call the day after Plaintiffs' attorney spoke with the attorney for the Christian Brothers indicating that Defendant Heathwood had admitted his acts to certain people. Upon information and belief, this person was threatened with a loss of her children and her job by a party identifying itself as connected with the Christian Brothers.

51. Defendants continued to assign Defendant Heathwood to schools where he would have constant interaction with children.

52. Upon information and belief, another Brother belonging to the Christian Brothers, teaching at Bishop Kearney High School, and accused of statutory rape charges in 1974, is currently listed as a member of the Advisory Board of the Christian Brothers.

53. Defendants Christian Brothers, Bishop Kearney High School and the Roman Catholic Diocese of Rochester intentionally misrepresented to Plaintiff and her family the trustworthiness of Defendant Heathwood during a period of time material hereto.

54. Defendants named in paragraph 53 knew at the time that they made their misrepresentations that they were false.

55. Defendants named in paragraph 53 made these misrepresentations for the purpose of inducing Plaintiff and her family to rely on them and Plaintiff rightfully relied on them in ignorance of their falsity to her injury.

**FIRST CAUSE OF ACTION
AGAINST DEFENDANT HEATHWOOD
(Sexual Abuse)**

56. Plaintiff realleges paragraphs 1 through 55.

57. Defendant Heathwood's conduct constitutes the tort of sexual abuse.

58. As a proximate result of Defendant's conduct, as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**SECOND CAUSE OF ACTION
AGAINST DEFENDANT HEATHWOOD
(Lewd and Lascivious Conduct)**

59. Plaintiff realleges paragraphs 1 through 58.

60. Defendant Heathwood's conduct constitutes the tort of lewd and lascivious conduct with a minor.

61. As a proximate result of Defendant's conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**THIRD CAUSE OF ACTION
AGAINST DEFENDANT HEATHWOOD
(Assault)**

62. Plaintiff realleges paragraphs 1 through 61.

63. Defendant Heathwood's conduct constitutes assault.

64. As a proximate result of Defendant's conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**FOURTH CAUSE OF ACTION
AGAINST DEFENDANT HEATHWOOD
(Battery)**

65. Plaintiff realleges paragraphs 1 through 64.

66. Defendant Heathwood's conduct constitutes battery.

67. As a proximate result of Defendant's conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**FIFTH CAUSE OF ACTION
AGAINST DEFENDANT HEATHWOOD
(False Imprisonment)**

68. Plaintiff realleges paragraphs 1 through 67.

69. Defendant Heathwood's conduct constitutes false imprisonment.

70. As a proximate result of Defendant's conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**SIXTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Intentional Infliction of Emotional Distress)**

71. Plaintiff realleges paragraphs 1 through 70.

72. Defendants' acts were extreme, outrageous and humiliating and intentionally or recklessly caused Plaintiff extreme emotional distress.

73. Defendants' conduct constitutes intentional infliction of emotional distress.

74. As a proximate result of Defendant's conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**SEVENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Breach of Trust)**

75. Plaintiff realleges paragraphs 1 through 74.

76. Defendants' conduct constitutes the tort of breach of trust.

77. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**EIGHTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Fraud)**

78. Plaintiff realleges paragraphs 1 through 77.

79. Defendant Heathwood's conduct constitutes fraud as specifically alleged above in paragraphs 36-39. The other Defendants' conduct constitutes fraud as specifically alleged above in paragraphs 53-55.

80. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**NINTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Breach of Fiduciary Duty)**

81. Plaintiff realleges paragraphs 1 through 80.

82. Defendants' conduct constitutes the tort of breach of fiduciary duty.

83. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**TENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT HEATHWOOD
(Respondeat Superior)**

84. Plaintiff realleges paragraphs 1 through 83.

85. Defendants are liable for Defendant Heathwood's conduct under the theory of respondeat superior.

86. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**ELEVENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT HEATHWOOD
(Negligent Placement Retention and Supervision)**

87. Plaintiff realleges paragraphs 1 through 86.

88. Defendants' conduct constitutes negligent placement, retention and supervision.

89. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**TWELFTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT HEATHWOOD
(Negligent Referral)**

90. Plaintiff realleges paragraphs 1 through 89.

91. Defendants' conduct constitutes negligent referral.

92. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**THIRTEENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT HEATHWOOD
(Negligent Infliction of Emotional Distress)**

93. Plaintiff realleges paragraphs 1 through 92.

94. Defendants' conduct constitutes negligent infliction of emotional distress.

95. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**FOURTEENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT HEATHWOOD
(Negligence)**

96. Plaintiff realleges paragraphs 1 through 95.

97. Defendants' conduct constitutes negligence.

98. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**FIFTEENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS EXCEPT HEATHWOOD
(Malpractice)**

99. Plaintiff realleges paragraphs 1 through 95.

100. Defendants' conduct constitutes malpractice.

101. As a proximate result of Defendants' conduct as alleged above, Plaintiff was damaged and is entitled to compensatory damages in the amount of \$1,000,000.00 and punitive damages in the amount of \$5,000,000.00.

**SIXTEENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Plaintiff Martin Maher's Derivative Action)**

102. Plaintiff Martin Maher realleges paragraphs 1 through 101.

103. As a proximate result of Defendants' conduct as alleged above, Plaintiff Martin Maher suffered loss of consortium from November 19, 1983, the date Plaintiffs were married, to the present and thereby is entitled to compensatory damages in the amount of \$1,000,000.00.

WHEREFORE, Plaintiffs pray for judgment against Defendants:

A. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the First Cause of Action;

B. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Second Cause of Action;

C. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Third Cause of Action;

D. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Fourth Cause of Action;

E. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Fifth Cause of Action;

G. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Sixth Cause of Action;

H. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Seventh Cause of Action;

I. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Eighth Cause of Action;

J. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Ninth Cause of Action;

K. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Tenth Cause of Action;

L. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Eleventh Cause of Action;

M. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Twelfth Cause of Action;

N. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Thirteenth Cause of Action;

O. Compensatory Damages of \$1,000,000.00 and punitive damages of \$5,000,000.00 on the Fourteenth Cause of Action;

P. Compensatory Damages of \$1,000,000.00 on the Fifteenth Cause of Action;

Q. Compensatory Damages of \$1,000,000.00 on the Sixteenth Cause of Action;

R. On all causes of action, for a Protective Order preventing Defendants, and their agents, from harassing or contacting Plaintiffs directly or indirectly other than through Plaintiffs' counsel.

S. On all causes of action for the costs and disbursements incurred herein.

T. On all causes of action, for such other and further relief as the Court may deem just and proper.

Dated: Rochester, New York
June 30, 1993

Yours, etc.,

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